

Jane Luciano, Esq. SBN 124263
9000 Crow Canyon Road
Suite S #168
Danville, CA 94506
(925) 216-6030

William McCann, Esq. NV SBN 12038
P.O Box 370
Genoa, NV 89411
Pro Haec Vice in Butte County Superior Court Cases

Attorneys for Plaintiffs and Claimants Liza Sims, individually,
Estate of Edna Gleason and Thomas and Jaydene Gardner

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

PACIFIC GAS AND ELECTRIC

COMPANY.

Debtors

X Affects Both Debtors

Bankr. Case No: 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**OBJECTIONS OF PLAINTIFFS
AND CLAIMANTS LIZA SIMS,
INDIVIDUALLY AND ON BEHALF
OF THOMAS AND JAYDENE
GARDNER PURSUANT TO PG&E
MOTION TO OBTAIN COVERAGE OF
“CHANNELING INJUNCTION” TO
DEFEAT PLAINTIFFS VARIOUS
CLAIMS FOR PUNITIVE DAMAGES
(PURSUANT TO LR 9014-1)**

(Relates to Dkt 13685, both Liza Sims
and Thomas and Jaydene Gardner cases)

**Hearing: May 24, 2023
Time: 10:00 AM
Via Tele-video conference**

I. INTRODUCTION

In the Broadway hit of yesteryear, *Man of La Mancha*, the guttersnipe girl, who has become in Don Quixote's dreams the lady Dulcinea, asks a simple question: "Why?"

This Court may well ask such a question of these humble Plaintiffs. and their potentially quixotic lawyers.

Because: Plaintiffs' Objection to this Honorable Court's "channeling injunction" was forged in the fires that cast Plaintiff Liza Sims' Mother into permanent dementia – instantly – resulting in a slow painful death. And for which there is no restitution.

Because: the present Objection to this Honorable Court's "channeling injunction" is morally, legally, and ethically justified by the tragic tale of Plaintiffs Jaydene and Thomas Gardner who, while in flight, watched the firestorm engulf their '1960s' retirement home including the black cat clock with tick tock eyes that kept time over the remaining golden days robbed from this elderly couple. And for which there is no restitution.

Because: in the prescient words of New York Time's writers Ivan Penn and Peter Evis:

"But the relatively small size of PG&E's financial penalties could rekindle concerns that large corporations often escape appropriate punishment for their actions."

(New York Times, ***PG and E Pleads Guilty to 84 Counts of Manslaughter in Camp Fire Cases***, June 16, 2020.

This remarkable development occurred post *PG and E v. The Superior Court of Sacramento*

County,¹ *In re Nancy Shao Su*², *Lockerby v. Sierra*³, and, last but not certainly least, *Kauaahau v. Geiger*⁴

¹ 24 Cal. App. 5th 1150 (2018)

² 290 F. 3rd 1140 (9th Circuit 2002)

³ 535 F. 3rd 1038 (9th Circuit 2008)

⁴ 523 U.S. 557 (1998)

1 Because the ‘slap – on – the – wrist’ ‘punishment given PG and E for the causation of
2 84 deaths is a mere contrivance to convince the residents of Butte County that PG and E
3 has been adequately punished.
4

5 Because this smoke and mirrors ploy does not bring resolution for these Plaintiffs, who are not
6 about to be bullied by the hundreds of lawyers feeding on the corpses of their dead, wounded,
7 maimed relatives and neighbors, *so that Plaintiffs’ suffering cannot be used to make a*
8 *difference. Lawyers who, by their machinations on behalf of both fire victims and PG and E-*
9 *pave the way for future disasters.*
10

11 Plaintiff Liza Sims, on behalf of herself and her mother, and the Gardners, demand
12 their day in court, before a jury of their peers, to prove that PG and E’s conduct was,
13 with respect to causation of the Camp fire, “willful”, “malicious” and or “fraudulent”.
14

15 The Butte County plea bargain was carefully designed to circumscribe any civil liability
16 for punitive damages in the then existing Chapter 11 proceedings, because
17 surprisingly, damages from “recklessness” or “gross negligence” may be discharged in
18 bankruptcy. Ordinary folks reading the tabloids don’t realize that.

19 Unfortunately for PG and E, the Grand Jury findings that gave rise to the indictment track-
20 precisely- on the doctrine of “willful blindness,” and their battery of criminal law specialists
21 could not-nor cannot-get around *that*. And if a trier of fact finds that PG and E-and or its
22 cascading boards of directors—were “willfully blind” during decades or prioritizing profits over
23 prudence, then it is subjected to non-dischargeable punitive damages. (See District Attorney of
24 Butte County Press release attached as Exhibit “1” referenced in Plaintiffs Request to Take
25 Judicial Notice filed concurrently herewith).
26

27 Punitive damages – whether arising from any statute or case – are intended to disincentive
28

1 individuals-corporation small or large---utilities, small or large---boards of directors and
2 executives (blind or sighted) from engaging in the type of intentional conduct that kills people.
3 The frustration of the District Attorney who helped craft this plea bargain, Michael Ramsey in
4 *not* being able to take steps to prevent this type of tragedy from happening again, has been
5 recently documented:

7 “But then we get to the Camp Fire, the CEO at that time stood in front of the Judge
8 and answered 84 times, guilty, your honor, as a picture of the person that they killed.
9 was shown on a screen. The organization has made a turn, there is no doubt. But it is
10 a bit like trying to move the Titanic away from that iceberg.” Michael Ramsey,
Butte County District Attorney, interview CAP Radio January 9, 2022.

11 Unless someone is brave enough to prove the “subjective” intent of this corporation
12 which is – after all, a person – the residents of Butte County and the people of
13 California will continuously be subjected to wildfires caused by a renegade utility’s
14 multiple, habitual, consistent – and predictable – breaches of the standard of care.
15 It will be “business as usual” or, as Dulcinea in *Man of La Manch* so eloquently
16 puts it in her sad soliloquy to the fact that nothing changes, *It’s All the Same*:

18 <https://www.youtube.com/watch?v=5w7ywCbuXNY>

20 II. FACTS

21 A. Plaintiffs Have not Waived nor Will They Waive 22 Their Claims for Punitive Damages Asserted in the Butte County Superior Court 23 Litigations

24 Liza Sims individually and on behalf of her now deceased Mother

25 Edna Gleason is Plaintiff in *Sims v. PG and E et al* No.19CV01700 (Superior Court in and for
26 Butte County) (hereinafter ‘the *Sims* case’)

27 Thomas and Jaydene Gardner are Plaintiff’s in *Gardner v. PG and E et al*
28

1 No. 19CV00379 (Superior Court in and for Butte County)

2 In both these cases, Plaintiffs' counsel:

3 1. Refused to participate in any fire-victim Plaintiff's cartel that purported to
4 'vote' for PG and E's plan of reorganization and
5

6 2. Included in the respective Proof of Claims forms filed with the Fire Victim
7 Trust Exhibits "2" and "3" attached hereto (and labelled Exhibit "A" included with the forms)
8 which make it crystal clear to the Trustees of said trust and to defendant PG and E that Plaintiffs
9 did not – and would not – waive any claims for punitive or exemplary damages under the
10 theories advanced in their State Court Cases.
11

12 And the Trustee – with the oversight of PG and E – processes these claim forms
13 *without objection thereto.*

14 (See, Declaration of Jane Luciano in Support of Plaintiffs' Objection)

15 B. Plaintiffs Assert Three Different Statutory Bases Justifying
16 an Award of Punitive Damages in Their State Court Cases
17

18 1. Plaintiffs asserts that PG and E, over a period of decades, engaged in
19 "oppression, fraud, and or malice" by failing to maintain its equipment and
20 failing to mitigate fire dangers associated with vegetation proximate its equipment,
21 in violation of California Civil Code 3294. Plaintiff asserts and will prove that a corporate
22 culture—a sort of *AI mens rea*, if you will—of placing profits over rate payer safety is
23 fraudulent *per se*. And it is no less fraudulent because it lurks beneath board room confidentiality
24 clauses or attorney client privileges.
25

26 Plaintiffs will prove that failing to maintain equipment and mitigate fire danger in a community
27 known by it as the habitation of low-income, elderly, retirees is oppressive. It is oppressive
28

1 because P G and E knew these rate payers *did not have the means, strength, or youthfulness to*
2 *fight back*. Plaintiffs *can* and *will* prove that. And that such conduct is beyond “recklessness” or
3 “gross negligence” and is “willful”. And that the evidence of said “willfulness” is clear and
4 convincing.

5
6 And that PG and E should therefore pay Plaintiffs a constitutionally sustainable amount of
7 punitive damages.

8 2 Plaintiff Liza Sims on behalf of her deceased Mother alleges that PG and E’s
9 conduct, above, constitutes ‘financial abuse’ in violation of California Welfare and Institutions
10 Code Section 15610.30, which is exacerbated in violation of California Welfare and Institutions
11 Code Section 15657.5 (b) as follows:
12

13 **(b)** Where it is proven by a preponderance of the evidence that a defendant is liable for financial
14 abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence
15 that the defendant has been guilty of recklessness, oppression, fraud, or malice in the
16 commission of the abuse, in addition to reasonable attorney’s fees and costs set forth in
17 subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the
18 limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages
19 recoverable shall not apply.

20 The Bankruptcy Court is asked to consider—carefully—the fact that the standard of proof is
21 *not* clear and convincing evidence, as in California’s general punitive damage statute—but
22 *beyond a reasonable doubt*. Plaintiff Sims believes she can clear that hurdle in proving
23 “willfulness.”

24 3. Plaintiffs will ask a jury of their peers to conclude that PG and E violated Public
25 Utilities Commission Code 2106 which provides as follows:

26 Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited
27 or declared unlawful, or which omits to do any, act, matter or thing required to be done, either by
28 the Constitution, any law of this State, or any order or decision of the commission, shall be liable
to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or
resulting therefrom. If the court finds that the act or omission was willful, *it may, in addition to*

1 *the actual damages, award exemplary damages. An action to recover for such loss, damage or*
2 *injury may be brought in any court of competent jurisdiction by any corporation or person.*
(Emphasis added)

3
4 It is not particularly surprising to Plaintiff's counsel that it could not find a *single instance*
5 where exemplary damages were awarded under this statute, against a California public utility.
6 There is something wrong with this picture.

7
8 In enacting this statute, the California legislature must have imagined that in vesting a corporate
9 entity with virtually unlimited power to use power as both a club and shield, some human being-
10 or group of human beings—might have the subjective intent to use that power in a willful,
11 malicious, fraudulent, or oppressive way. So, the Bankruptcy Court should ask itself—was the
12 Wizard of Oz right? Is it true that in the Golden State “he who hath the gold maketh the rule?”
13 Or is it more correct to say, with respect to PG and E: “it is that has the lawyers, lobbyists, and golf
14 interpreters...or has the rules interpreted...to its benefit.”
15

16 **III. LEGAL ARGUMENT**

17 **A. PG and E Offers No Authority or Structural Rationale for Inclusion of Plaintiffs’** 18 **Punitive Damages Claims in the ‘Channeling Injunction’**

19 PG and E offers no rationale (moral, legal, spiritual, or from a Chapter 11 point of view,
20 structural)-whatsoever for the imposition of the so called ‘channeling injunction’ upon
21 Plaintiffs remaining claims.

22 In coming to this conclusion, Plaintiffs were constrained to study recent bankruptcy cases to
23 Determine not only the etiology of this creature, but whether it might apply to their cases.

24 See ANNUAL SURVEY OF BANKRUPTCY LAW, Part III, Recent Developments, Section
25 105 (a) of the Bankruptcy Code, by Malhar S. Pagay, Esq.
26
27
28

1 One thing is evident: **an appellate court, mindful of the restriction that section 105 (a)**
2 **cannot trump specific provisions of the Bankruptcy Code, and must be exercised within the**
3 **parameters of the Code itself.**

4 This weighty conclusion is drawn from a Third Circuit Court of Appeals decision dealing with a
5 ‘channeling injunction’ arising from asbestos contamination mass tort litigations, to wit, *In re*
6 *Combustion Engineering, Inc.*, 391 F. 3d 190, 236, 43 Bankr. Ct. Dec (CRR) 271,
7 Bankr. L. rep (CCH) P 80206 (3rd Cir. 2004), as amended, (Feb. 23, 2005) (citation omitted).
8 So, it seems to this humble scribe that a “channeling injunction” cannot be used to grant—in
9 essence—a summary judgment concluding the elements of Section 523 (a) (6) of the Bankruptcy
10 Code are not met by these Plaintiffs. Though the 9th Circuit has yet to speak concerning the
11 effects of the “channeling injunction” presently in effect in the PG and E fire cases, if we view
12 its recent holding in *Fireman’s Fund v. Plant Insulation Company* (citation not available: See,
13 *American Bankruptcy Institute Journal*, **9th Circuit Reverses 524 (g) Plan Confirmation** by
14 *Jacob C. Cohn*⁵) and *Jeffrey R. Waxman*), we conclude that the 9th Circuit will be ‘fair and
15 equitable’ to these Plaintiffs, as well, if the scope of the present injunction divests them of
16 substantial rights. Wouldn’t it be special if the 9th Circuit Court of appeals finally rejected plan
17 confirmation?
18
19
20
21
22

23 **B. PG and E Was, Is and Potentially Will Be: “Willfully Blind.”**

24
25
26 ⁵ One of Plaintiff’s lawyers, who works in colder regions, is mystified by the proliferation of the word
27 ‘fire’ in the present lexicography. For example, Mr. Cohn’s firm owns a federal trademark asserting it has something
28 called ‘**LEGAL FIRE POWER**’.

See, <https://tmsearch.uspto.gov/bin/showfield?f=doc&state=4810:ig7dlv.2.1>

1 “Willful blindness”⁶ is a concept existing in the ether between “reckless conduct” and down and
2 dirty *mens rea*. It is recognized by the Supreme Court in *Global Tech Appliance v. SEB*, 131 S.
3 Ct. 2060 (2011). It can be defined as a corporation—through its officers and directors—knowing
4 something terribly wrong continually transpires (such as decades long systems neglect and
5 failure to remove vegetation which can easily ignite should those systems fail) and doing little- -
6 or nothing about it.

8 Herewith is the citation to the Grand Jury Transcript in the Camp fire Investigation:

9 https://interactive.abc10.com/pdfs/KXTV_PGE_Grand_Jury_Binder.pdf

10 The Transcript would ordinarily be attached as Exhibit “4” to this Objection, but it is massive
11 and must be referenced as noted. It is included in Plaintiffs’ Request to Take Judicial Notice.

12 This set of evidence is massive. But it has been analyzed by Plaintiff’s Nevada counsel William
13 D. McCann, Esq. in depth, and it proves that PG and E engaged in a “pattern and practice” of
14 engaging in an anti-safety, pro-profits corporate culture, and shows “subjective intent” by
15 continually changing board of directors to intentionally violate Public Utility Commission
16 standards of safety and maintenance. (See, Declaration of William D. McCann, Esq. in Support
17 of Objection attached hereto). The Grand Jury transcripts shows a decades-long “willful
18 blindness” on behalf of PG and E. And “willful blindness”, if found, prevents non-
19 dischargability of a punitive damages award against PG and E.

20 /

21 /

22 6

23 The doctrine of “willful blindness” imputes subjective knowledge of illegal activity to a defendant and is used in
24 both civil and criminal proceedings as a substitute mental state that fully satisfies a required *mens rea* of knowledge.
25 See *infra* notes 57-64 and accompanying text for an in-depth discussion of the willful blindness doctrine.
26 Washington University Law Quarterly 71, page 1199.

1 **IV. 'PATTERN AND PRACTICE OF WRONGDOING IS EVIDENCE OF**
2 **WILLFULNESS**

3 This Court is respectfully asked to review the precedent established in the chestnut
4 case of *TXO Production Company v. Alliance Resources*, 131 S Ct 2060 (2011).
5 Basically, the Butte County Grand Jury Transcript, the status of PG and E as a probationer
6 before the Federal Court for the Northern District of California prior to the Tubbs, Camp, and
7 Dixie fires, shows a pattern and practice of wrongdoing (whether civil culpability for the
8 respective fires is admitted, or not) which is evidence, *per se* – of willfulness.
9

10
11 **V. INCLUDING PLAINTIFFS' PUNITIVE DAMAGES CLAIM IN THE**
12 **'CHANNELING INJUNCTION' IS DE-FACTO- -AND IMPERMISSIBLE—**
13 **GRANT OF SUMMARY JUDGMENT**

14 Liza Sims and the Gardners are entitled to prove 'willfulness.' The California Appeals decision
15 in footnote 1 supra, overturned by writ the Butte County Superior Court's overruling of a
16 demurrer filed by PG and E against a potential award of punitive damages. But that ruling
17 concerned a *different* fire than Camp, excluded from its effect claims for punitive damages,
18 pursuant to Public Utilities Code Section 2106, and was limited in its effect to a 'clear and
19 convincing' standard of proof, not the 'preponderance of evidence' standard accorded elders who
20 have suffered the type of abuse for which PG and E is liable.
21

22 California Code of Civil Procedure 437c, Federal Rule of Civil Procedure 56, and Bankruptcy
23 Rule 7056 have been interpreted --- uniformly-- to require denial of summary judgment where
24 the opponent raises a material issue of fact.
25

26 7

27 For the millennials reading this brief, one used to refer to an 'older' case as a 'chestnut-- - i.e., a precedent that
28 should be preserved, or perhaps, resurrected in a hope chest.

1 “Willfulness” --or lack thereof – has *never* been adjudicated with respect to PG and E’s acts and
2 omissions relative to the Camp fire. The 9th Circuit panel in *in re Nancy Shao Su*, cited *supra*,
3 Was apparently of the view that a corporation is not capable of “subject” intent, and, if that is so,
4 then punitive damages, as we know them, are dead in the water. But if AI fiendish thingies are
5 capable of “subjective” intent as argued in *The London Economist* (April 22nd-28th 2003),
6 aren’t boards of directors?
7

8 Respectfully. Plaintiffs deserve and herewith solicit their day in court on the issue of punitive
9 damages.

10 May 9, 2023

11
12 /s/William D. McCann/s/
William D. McCann

13
14 /s/Jane Lujciano/s/
Jane Luciano

15 Attorneys for Plaintiffs and Claimants
16 Liza Sims, Edna Gleason and Thomas
17 And Jaydene Gardner
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28